

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

without being in violation. However, this provision contains an error that states that incinerators may emit opacity in excess of 60 percent during these times. The amendment corrects this error to specify that incinerators may emit above 40 percent opacity but no more than 60 percent opacity during periods of operation breakdown or during the cleaning of control equipment.

Items 20 through 23 amend subrule 25.1(9), paragraph 25.1(10)“a,” subrule 25.1(12) and rule 567—25.2(455B), respectively, to adopt by reference recent EPA technical amendments to performance test methods for NSPS (40 CFR Part 60) and the Acid Rain program (40 CFR Part 75).

Item 24 revises subrule 33.3(1) to amend the PSD program definition for “volatile organic compound” or “VOC.” EPA amended the federal definition as explained in Item 1.

These amendments are intended to implement Iowa Code Supplement section 455B.131(7), section 455B.133, and Supplement section 455B.152.

These amendments will become effective on June 11, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 20 to 23, 25, 33] is being omitted. These amendments are identical to those published under Notice as **ARC 6517B**, IAB 1/2/08.

[Filed 4/18/08, effective 6/11/08]

[Published 5/7/08]

[For replacement pages for IAC, see IAC Supplement 5/7/08.]

ARC 6782B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on October 24, 2007, as **ARC 6351B**. Six public hearings were held, with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from approximately 1,260 persons and organizations. A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources at <http://www.iowadnr.com/water/uaa.html>.

The adopted amendments have been modified from those published under Notice. Prior to presenting the amendments to the Environmental Protection Commission for approval, the Department made specific changes to 47 stream segments. The modifications were made after all comments from the public comment process were considered.

The changes made to the Notice prior to presentation to the Commission are as follows:

1. Beaver Creek (Butler/Black Hawk) – added Class A3 near New Hartford and Parkersburg.

2. Big Creek (Henry/Des Moines) – changed from Class A2 to Class A1 for entire assessed reach.

3. Bloody Run (Clayton) – changed from Class A2 to Class A1 for entire assessed reach.

4. Boyer River – changed from Class A2 to Class A1 for majority of the assessed reach.

5. Buffalo Creek (Jones/Buchanan) – changed from Class A2 to Class A1 to Buffalo Creek Park.

6. Buttrick Creek (Greene) – changed from Class A2 to Class A1 for entire assessed reach.

7. Cedar Creek (Wapello/Jefferson) – changed from Class A2 to Class A1 to Fairfield; added Class A3 near Johnson-Noel Buckeye Wildlife Area in Wapello County.

8. Cedar Creek (Calhoun/Greene) – changed from Class A2 to Class A3 near University 40 Park in Greene County.

9. Cedar Creek (Sac/Pocahontas) – changed from Class A2 to Class A1 very near the mouth.

10. Clear Creek (Iowa/Johnson) – changed from Class A2 to Class A3 to Tiffin.

11. Cloie Branch (Dubuque) – changed from Class A2 to Class A3 to Clay Hill Road.

12. Crow Creek (Scott) – changed from Class A2 to Class A3 to Utica Road.

13. Deer Creek (Tama) – changed from Class A2 to Class A3 for entire assessed reach.

14. Durion Creek (Dubuque/Delaware) – changed from Class A2 to Class A3 through Worthington.

15. Eagle Creek (Wright/Hamilton) – changed from Class A2 to Class A1 to 290th Street.

16. East Boyer River – changed from Class A2 to Class A1 near the dam in Denison.

17. East Branch Iowa River – changed from Class A2 to Class A1 to Garner.

18. English River – changed from Class A2 to Class A1 for entire assessed reach.

19. Floyd River – changed from Class A2 to Class A1 for entire assessed reach.

20. Hardin Creek (Greene/Calhoun) – changed from Class A2 to Class A1 to Jefferson.

21. Iowa River – changed from Class A2 to Class A1 for entire assessed reach.

22. Little Rock River – changed from Class A2 to Class A1 for entire assessed reach.

23. Little Turkey River (Chickasaw/Fayette) – changed from Class A2 to Class A1 to the Waucoma Impoundment dam.

24. Long Branch (Guthrie) – Diamondhead Lake changed to Class A1, B(LW), HH.

25. Maple River – changed from Class A2 to Class A1 for entire assessed reach.

26. Maquoketa River – changed from Class A2 to Class A1 to Backbone Lake dam and Class A3 to Highway 3.

27. Middle Raccoon River – changed from Class A2 to Class A3 near Carroll.

28. Middle River – changed from Class A2 to Class A1 to Guthrie/Adair county line.

29. Mill Creek (Cherokee/O'Brien) – changed from Class A2 to Class A1 to Bear Creek, changed to Class A3 near Paullina.

30. Nodaway River – changed from Class A2 to Class A3 near Clarinda.

31. North Fork Maquoketa River – changed from Class A2 to Class A1 to Highway 136.

32. North Raccoon River – changed from Class A2 to Class A1 to Vogel Access.

33. North River – changed from Class A2 to Class A1 for entire assessed reach.

34. North Skunk River – changed from Class A2 to Class A1 for entire assessed reach.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

35. Ocheyedon River – changed from Class A2 to Class A1 for entire assessed reach.

36. Odebolt Creek (Sac/Ida) – changed from Class A2 to Class A3 near Ida Grove.

37. Rock Creek (Cedar) – changed from Class A2 to Class A3 near Red Oak Park.

38. South Fork Catfish Creek (Dubuque) – changed from Class A2 to Class A3 near Dubuque.

39. South Skunk River – changed from Class A2 to Class A1 for entire assessed reach.

40. Trout Run (Trout Creek) – changed from Class A2 to Class A3 to Highway 9.

41. Unnamed Creek (Davis) – changed from Class A2 to Class A3 for entire assessed reach.

42. Wapsipinicon River – changed from Class A2 to Class A1 for entire assessed reach.

43. West Branch Wapsinonoc Creek (Muscatine/Cedar) – slight change of initial recommendation from Class A2 to Class A1.

44. West Buttrick Creek (Greene/Webster) – changed from Class A2 to Class A1 to Spring Lake Park.

45. West Nishnabotna River – changed from Class A2 to Class A1 to West Fork West Nishnabotna River.

46. Whitewater Creek (Dubuque/Jones) – changed from Class A2 to Class A1 to Fillmore Recreation Area.

47. Willow Creek (Carroll/Greene/Guthrie) – changed from Class A2 to Class A1 to near the Carroll/Guthrie county line.

48. Rule making terminated for: Competine Creek (Jefferson) – more data needed for completion.

49. Rule making terminated for: Little Beaver Creek – inadvertently added to the Notice of Intended Action.

50. Rule making terminated for: Unnamed Creek (Wineshiek County near City of Calmar) – more data needed for completion.

51. Revise “Unnamed Creek (Crawford County near City of Westside)” from Notice of Intended Action to be “East Boyer River (Crawford County near City of Westside)” – wrong stream name inadvertently applied.

The amendments were presented to the Environmental Protection Commission on April 8, 2008. Public comments were accepted, and the amendments were discussed by the Commission. At that time, adoption of the amendments was tabled and a special meeting of the Commission was set for April 16, 2008. After further discussion on April 16, the Commission adopted amendments to the stream classifications adopted by reference in this rule making. In addition to adopting the 51 amendments described above, the Commission adopted the following amendments:

Amendment #1. The Commission removed the following stream segments from the rule making because the Commission determined that these streams warrant an A1 recreational use designation:

1. Badger Creek in Warren County from 25th Street to the confluence with the North River.

2. Beaver Creek in Butler County from Moore's Access to the confluence with the Cedar River.

3. Beaver Creek in Polk and Dallas Counties from the confluence with the Des Moines River to the Dallas/Boone county line.

4. Boyer River – entire reach.

5. Brushy Creek within the Brushy Creek State Recreation Area.

6. Buffalo Creek from the Buffalo Creek Park boundary to 220th Street.

7. Cedar Creek in Greene and Calhoun Counties from the mouth to the upper boundary of the University 40 Park.

8. Cedar Creek in Sac, Calhoun and Pocahontas Counties from the mouth to the 196th St. Bridge.

9. Hardin Creek in Greene and Calhoun Counties from its mouth to 170th Street.

Amendment #2. The Commission changed the following stream segments to an A3 recreational use designation:

1. Bear Creek near Shellsburg from the mouth to Palo Marsh Road.

2. Buckeye Creek in Wapello County from the mouth to 215th Street.

3. Clear Creek from the area currently proposed to be designated A3 upstream to the confluence with the unnamed creek near Chambers Rd.

4. Lake Creek in Calhoun County from the confluence with the unnamed creek in Section 11, T 86 N, R 34 W, to the confluence with the unnamed creek in Section 12, T 86 N, R 34 W.

5. Linn Creek in Marshall County from 18th Street to the bridge at Marshalltown Rd., also known as Marshall Blvd.

6. Lotts Creek in Humboldt County between Michigan and Montana Avenues.

7. Middle Raccoon River in Carroll County from area currently proposed to be designated A3 upstream to the confluence with unnamed creek above the last Sauk Rail Trail bridge.

8. Trout Creek from the confluence with the Upper Iowa River to the Decorah Trout Hatchery.

9. Milford Creek from the mouth to Lower Gar Lake.

With the inclusion of the modifications described above, this Adopted and Filed rule making changes the Commission's Water Quality Standards (WQS) as summarized below:

1. Revises and lists approximately 100 river and stream segments as Class A2 Secondary Contact Recreational Use designated waters in the rule-referenced document “Surface Water Classification.”

2. Revises and lists approximately 136 river and stream segments as both Class A2 Secondary Contact Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document “Surface Water Classification.”

3. Revises and lists 4 stream segments as both Class A2 Secondary Contact Recreational Use and Class B(WW-3) Warm Water-Type 3 designated waters in the rule-referenced document “Surface Water Classification.”

4. Revises and lists 11 river and stream segments as both Class A3 Children's Recreational Use and Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document “Surface Water Classification.”

5. Revises and lists 31 river and stream segments as Class A3 Children's Recreational Use designated waters in the rule-referenced document “Surface Water Classification.”

6. Revises and lists 5 river and stream segments as Class B(WW-2) Warm Water-Type 2 designated waters in the rule-referenced document “Surface Water Classification.”

7. Revises and lists 9 stream segments as Class B(WW-2) Warm Water-Type 2 and no recreational use designated waters in the rule-referenced document “Surface Water Classification.”

8. Revises and lists 1 stream segment as Class B(WW-3) Warm Water-Type 3 and no recreational use designated waters in the rule-referenced document “Surface Water Classification.”

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective June 11, 2008. The following amendments are adopted.

Amend subrule 61.3(5) as follows:

61.3(5) Surface water classification. The department hereby incorporates by reference "Surface Water Classification," effective March 22, 2006 June 11, 2008. This document may be obtained on the department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

[Filed 4/18/08, effective 6/11/08]

[Published 5/7/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/7/08.

ARC 6759B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 11, "Overpayments," Iowa Administrative Code.

These amendments restructure Chapter 11 to accommodate the collection of debts due to trafficking in Food Assistance benefits. "Trafficking" is the buying or selling of electronic benefits transfer (EBT) cards or trading benefits for firearms, ammunition, explosives, controlled substances, or any consideration other than eligible food. The value of the trafficked benefits is not an overpayment, since the benefits were correctly issued to an eligible household, but is a federal debt that the state is required to collect. This debt is treated as an intentional program violation for collection purposes.

These amendments change the title of the chapter to "Collection of Public Assistance Debts," substitute the term "debt" for "overpayment," and redefine the term "debtor" to include persons found guilty of trafficking and persons who have fraudulently received Medicaid services. Language is added to clarify procedure on establishment of a claim and when a claim is subject to collection action. The amendments also update the definition of "public assistance" to include the IowaCare program and update form titles and program names.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, the Department does not have the authority to waive federal requirements.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on November 7, 2007, as **ARC 6370B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin as **ARC 6371B** on the same date. The Department received no public comments on the Notice of Intended Action but has made a

number of technical changes based on suggestions from the Department of Inspections and Appeals:

- Added a sentence to the definition of debtor in Item 2 to clarify that for Medicaid purposes, the term may include a person who is not a Medicaid member but who has fraudulently received Medicaid services.

- Removed paragraph 11.2(2)"f." The reference to a form in former paragraph "f" was inadvertently overlooked when the rule on FIP intentional program violation was rescinded effective January 1, 2007. Paragraphs "g," "h" and "i" are relettered as "f," "g" and "h," respectively. Relettered paragraph "h" is corrected to reflect the new title "Demand Letter for Child Care Assistance Agency Error Overissuance" for Form 470-3628. New paragraph "i" is added to reflect the actual form number for the "Demand Letter for Child Care Assistance Client Error Benefit Overissuance," which is 470-3807.

- Added to subrule 11.2(4) another circumstance when collection action does not occur due to an exception to policy.

- Struck the phrase "the percentage to" in subrule 11.3(3) to clarify the sentence.

- Struck from subparagraphs 11.4(1)"b"(1) and 11.5(1)"b"(1) an exemption for debts under investigation for fraud and added an exemption for circumstances when debt collection is suspended due to an exception to policy. Collection action is not suspended during a fraud investigation.

- Struck the phrase "on or about the first working day of the" from subrule 11.4(2) and substituted the phrase "twice each" to reflect the current practice regarding submission of debtor lists to the Department of Administrative Services (twice each month).

- Restructured sections of subrule 11.4(5) and paragraph 11.5(1)"a" to address unnumbered and unlettered paragraphs.

- Struck from paragraph 11.5(1)"a" an exemption for referral for court prosecution. Collection action is not suspended when a case is referred for prosecution.

- Added language to paragraph 11.5(1)"a" to clarify that the period for determining that a debtor is delinquent does not begin until the due date for the demand letter as defined in 441—subrule 65.21(4), which is 20 days after the letter is issued.

- Clarified language in subrule 11.5(4) about when the Treasury Department will impose an offset fee.

The Council on Human Services adopted these amendments on April 9, 2008.

These amendments are intended to implement Iowa Code sections 217.34, 234.6(4), 239B.14, and 249A.5.

These amendments shall become effective June 11, 2008, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 11**, title and preamble, as follows:

CHAPTER 11 OVERPAYMENTS

COLLECTION OF PUBLIC ASSISTANCE DEBTS

PREAMBLE

These rules define the department's policies regarding the collection of ~~overpayments~~ *public assistance debts*. These rules outline what information must be maintained for each claim for an overpayment *or other debt owed the department* and how the payments are to be applied. These rules also out-